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HOUSE BILL 251

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Thomas A. Anderson

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING REMEDIES TO VICTIMS OF  
IDENTITY THEFT; PROVIDING FOR IDENTITY THEFT PASSPORTS;  
REQUIRING POLICE REPORTS; EXTENDING THE TIME LIMIT FOR  
PROSECUTION OF CERTAIN CRIMES; CLARIFYING DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-1-8 NMSA 1978 (being Laws 1963,  
Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--  
[No] A person shall not be prosecuted, tried or punished in any  
court of this state unless the indictment is found or  
information or complaint is filed [~~therefor~~] within the time as  
provided:

A. for a second degree felony, within six years  
from the time the crime was committed;

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1 B. for a third or fourth degree felony, within five  
2 years from the time the crime was committed;

3 C. for a misdemeanor, within two years from the  
4 time the crime was committed;

5 D. for a petty misdemeanor, within one year from  
6 the time the crime was committed;

7 E. for any crime against or violation of Section  
8 51-1-38 NMSA 1978, within three years from the time the crime  
9 was committed;

10 F. for a felony pursuant to [~~Sections~~] Section  
11 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978 [~~or Section 4 of this 2005~~  
12 ~~act~~], within five years from the time the crime was committed;  
13 provided that for a series of crimes involving multiple filing  
14 periods within one calendar year, the limitation shall begin to  
15 run on December 31 of the year in which the crimes occurred;

16 G. for an identity theft crime pursuant to Section  
17 30-16-24.1 NMSA 1978, within five years from the time the crime  
18 was discovered;

19 [~~G.~~] H. for any crime not contained in the Criminal  
20 Code or where a limitation is not otherwise provided for,  
21 within three years from the time the crime was committed; and

22 [~~H.~~] I. for a capital felony or a first degree  
23 [~~violent~~] felony, no limitation period shall exist and  
24 prosecution for these crimes may commence at any time after the  
25 occurrence of the crime."

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1 Section 2. Section 30-16-24.1 NMSA 1978 (being Laws 2001,  
2 Chapter 138, Section 1, as amended) is amended to read:

3 "30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY  
4 ELECTRONIC FRAUD.--

5 A. Theft of identity consists of:

6 (1) willfully obtaining, recording or  
7 transferring personal identifying information of another person  
8 without the authorization or consent of that person and with  
9 the intent to defraud that person or another or with the intent  
10 to sell or distribute the information to another for an illegal  
11 purpose; or

12 (2) using personal identifying information of  
13 another person, whether that person is dead or alive, or of a  
14 false or fictitious person, to avoid summons, arrest or  
15 prosecution or to impede a criminal investigation.

16 B. Obtaining identity by electronic fraud consists  
17 of knowingly and willfully soliciting, requesting or taking any  
18 action by means of a fraudulent electronic communication with  
19 intent to obtain the personal identifying information of  
20 another.

21 C. As used in this section:

22 (1) "fraudulent electronic communication"  
23 means a communication by a person that is an electronic mail  
24 message, web site or any other use of the internet that  
25 contains fraudulent, false, fictitious or misleading

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1 information that depicts or includes the name, logo, web site  
2 address, email address, postal address, telephone number or any  
3 other identifying information of a business, organization or  
4 state agency, to which the person has no legitimate claim of  
5 right; ~~and~~

6 (2) "personal identifying information" means  
7 information that alone or in conjunction with other information  
8 identifies a person, including the person's name, address,  
9 telephone number, driver's license number, social security  
10 number, date of birth, biometric data, place of employment,  
11 mother's maiden name [of the person's mother], demand deposit  
12 account number, checking or savings account number, credit card  
13 or debit card number, personal identification number,  
14 electronic identification code, automated or electronic  
15 signature, passwords or any other numbers or information that  
16 can be used to access a person's financial resources, obtain  
17 identification, act as identification or obtain goods or  
18 services; and

19 (3) "biometric data" means data, such as  
20 finger, voice, retina or iris prints or deoxyribonucleic acid,  
21 that capture, represent or enable the reproduction of unique  
22 physical attributes of a person.

23 D. Whoever commits theft of identity is guilty of a  
24 fourth degree felony.

25 E. Whoever commits obtaining identity by electronic

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1 fraud is guilty of a fourth degree felony.

2 F. Prosecution pursuant to this section shall not  
3 prevent prosecution pursuant to any other provision of the law  
4 when the conduct also constitutes a violation of that other  
5 provision.

6 G. In a prosecution brought pursuant to this  
7 section, the theft of identity or obtaining identity by  
8 electronic fraud shall be considered to have been committed in  
9 the county:

10 (1) where the person whose identifying  
11 information was appropriated, obtained or sought resided at the  
12 time of the offense; or

13 (2) in which any part of the offense took  
14 place, regardless of whether the defendant was ever actually  
15 present in the county.

16 H. A person found guilty of theft of identity or of  
17 obtaining identity by electronic fraud shall, in addition to  
18 any other punishment, be ordered to make restitution for any  
19 financial loss sustained by a person injured as the direct  
20 result of the offense. In addition to out-of-pocket costs,  
21 restitution may include payment for costs, including attorney  
22 fees, incurred by that person in clearing the person's credit  
23 history [~~or~~], credit rating, criminal history or criminal  
24 charges or costs incurred in connection with a [~~civil or~~  
25 ~~administrative~~] legal proceeding to satisfy a debt, lien,

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1 judgment or other obligation of that person arising as a result  
2 of the offense.

3 I. The sentencing court shall issue written  
4 findings of fact and may issue orders as are necessary to  
5 correct ~~[a public record]~~ public records and errors in credit  
6 reports and identifying information that ~~[contains]~~ contain  
7 false information as a result of the theft of identity or of  
8 obtaining identity by electronic fraud."

9 Section 3. A new section of Chapter 29 NMSA 1978 is  
10 enacted to read:

11 "[NEW MATERIAL] IDENTITY THEFT REPORTS.--When a law  
12 enforcement officer interviews an alleged identity theft  
13 victim, the law enforcement officer shall make a written report  
14 of the information provided by the victim and by witnesses on  
15 appropriate forms provided by the attorney general. A copy of  
16 the police report shall be filed with the office of the  
17 attorney general."

18 Section 4. [NEW MATERIAL] USE OF FALSE IDENTITY BY A  
19 PERSON CHARGED WITH A CRIME--EXPUNGEMENT FROM POLICE AND COURT  
20 RECORDS.--

21 A. A person whose name or other identifying  
22 information was used, without consent or authorization, by  
23 another person who was charged, arrested or convicted of a  
24 crime while using such name or identification may, with notice  
25 to the prosecutor, file a petition in the criminal action, if

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1 pending, or if the criminal action is not pending, then in a  
2 court of competent jurisdiction, requesting a determination of  
3 factual innocence and an expungement of the petitioner's  
4 personal identifying information from the record. If the court  
5 finds by clear and convincing evidence that the petitioner did  
6 not commit the offense with which the petitioner's identity has  
7 been associated, the court shall issue an order certifying the  
8 petitioner's factual innocence.

9 B. When a court finds a petitioner factually  
10 innocent pursuant to Subsection A of this section, the court  
11 shall order that the petitioner's name and other identifying  
12 information contained in the court records be removed and the  
13 records labeled to show that, due to identity theft, the  
14 information is not accurate and does not reflect the  
15 perpetrator's true identity. The court shall also order  
16 expungement of the arrest information pursuant to Section  
17 29-3-8.1 NMSA 1978.

18 C. A court may at any time vacate the determination  
19 of factual innocence if the petition, or information submitted  
20 in support of the petition, contains a material  
21 misrepresentation or fraud. If the court vacates the  
22 determination, the court shall rescind all orders made pursuant  
23 to this section.

24 Section 5. [NEW MATERIAL] IDENTITY THEFT PASSPORT--  
25 DATABASE.--

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1           A. The attorney general, in cooperation with the  
2 department of public safety and the motor vehicle division of  
3 the taxation and revenue department, shall issue an identity  
4 theft passport to a person who claims to be a victim of  
5 identity theft pursuant to Section 30-16-24.1 NMSA 1978, and  
6 who provides to the attorney general:

7                   (1) a certified copy of a court order obtained  
8 pursuant to Section 4 of this 2006 act or a full set of  
9 fingerprints;

10                   (2) a driver's license or other government-  
11 issued identification or record; and

12                   (3) other information as required by the  
13 attorney general.

14           B. An identity theft passport shall contain a  
15 picture of the person to whom it was issued and other  
16 information as the attorney general deems appropriate.

17           C. The attorney general may enter into a memorandum  
18 of understanding with the motor vehicle division of the  
19 taxation and revenue department for the development and  
20 issuance of a secure form of identity theft passport. When an  
21 identity theft passport is issued, the motor vehicle division  
22 shall note on the person's driver record that an identity theft  
23 passport has been issued.

24           D. An identify theft passport shall be accepted as  
25 evidence of identity by law enforcement officers and others who

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1 may challenge the person's identity.

2 E. The attorney general shall maintain a database  
3 of identity theft victims who have reported to a law  
4 enforcement agency or have been issued an identity theft  
5 passport. The attorney general may provide access to the  
6 database only to criminal justice agencies. For purposes of  
7 identification and authentication, the attorney general may  
8 allow access to specific information about a person who has  
9 become a victim of identity theft to that person or to that  
10 person's authorized representative.

11 F. The attorney general shall keep on file each  
12 application for an identity theft passport and each police  
13 report of identity theft submitted by a law enforcement agency.

14 G. The attorney general shall prepare and make  
15 available to local law enforcement agencies and to the general  
16 public an information packet that includes information on how  
17 to prevent and stop identity theft.

18 Section 6. [NEW MATERIAL] IDENTITY THEFT--CREDIT  
19 REPORTS.--

20 A. If a person submits a copy of a police report  
21 indicating identity theft or an identity theft passport to a  
22 consumer reporting agency, the agency shall within thirty days  
23 block the reporting of any information that the person alleges  
24 appears on the person's credit report as a result of a  
25 violation of Section 30-16-24.1 NMSA 1978.

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1           B. A consumer reporting agency may decline to block  
2 or may rescind a block of a person's information if, in the  
3 exercise of good faith and judgment, the consumer reporting  
4 agency believes that:

5                   (1) the information was blocked due to a  
6 misrepresentation of a material fact by the person;

7                   (2) the information was blocked due to fraud,  
8 in which the person participated or of which the person had  
9 knowledge, and which may for purposes of this section be  
10 demonstrated by circumstantial evidence;

11                   (3) the person agrees that portions of the  
12 blocked information or all of it were blocked in error;

13                   (4) the person knowingly obtained or should  
14 have known that he obtained possession of goods, services or  
15 money as a result of the blocked transaction or transactions;  
16 or

17                   (5) the consumer reporting agency, in the  
18 exercise of good faith and reasonable judgment, has substantial  
19 reason based on specific, verifiable facts to doubt the  
20 authenticity of the alleged violation of Section 30-16-24.1  
21 NMSA 1978.

22           C. If blocked information is unblocked pursuant to  
23 this section, the person shall be notified in the same manner  
24 as consumers are notified of the reinsertion of information  
25 pursuant to the federal Fair Credit Reporting Act, 15 U.S.C.

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1 168li, as amended, or within five business days, whichever is  
2 later.

3 D. A consumer reporting agency shall delete from a  
4 person's credit report inquiries for credit reports based upon  
5 credit requests that the consumer reporting agency verifies  
6 were initiated as a result of a violation of Section 30-16-24.1  
7 NMSA 1978.

8 E. As used in this section:

9 (1) "consumer reporting agency" means a person  
10 that, for monetary fees, dues or on a cooperative nonprofit  
11 basis, regularly engages in the practice of assembling or  
12 evaluating consumer credit information or other information on  
13 consumers for the purpose of furnishing consumer credit reports  
14 to third parties; and

15 (2) "credit report" means a written, oral or  
16 other communication of information by a consumer reporting  
17 agency bearing on a consumer's credit worthiness, credit  
18 standing, credit capacity, character, general reputation,  
19 personal characteristics or mode of living that is used or  
20 expected to be used or collected for the purpose of serving as  
21 a factor in establishing the consumer's eligibility for credit,  
22 insurance, investment, benefit, employment or other purpose as  
23 defined by the federal Fair Credit Reporting Act, 15 U.S.C.  
24 1681a.

25 Section 7. EFFECTIVE DATE.--The effective date of the  
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1 provisions of this act is July 1, 2006.

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